



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0374]

RIN 1625-AA00

Safety Zones: Catawba Island Club Fire Works Catawba Island Club, Port Clinton, OH; Racing for Recovery, Lake Erie, Sterling State Park, Monroe, MI; Put-In-Bay Fireworks, Fox's the Dock Pier, South Bass Island, Put-In-Bay, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones in the waters of Lake Erie in the vicinity of Catawba Island, Port Clinton, OH; on Lake Erie in the vicinity of Sterling State Park, Monroe, MI; and on Lake Erie in the vicinity of South Bass Island, Put-In-Bay, OH. These zones are intended to restrict vessels from portions of Lake Erie during the Catawba Island Club Memorial Day Fireworks event, the event known as "Racing for Recovery, Half & Sprint," and for the two fireworks events at Put-in-Bay. These temporary safety zones

are necessary to protect people and vessels from the hazards associated with these events.

DATES: This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 10:30 p.m. on June 23, 2012. The safety zone has been enforced with actual notice since 9:15 p.m. on May 27, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0374 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0374 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail the Marine Events Coordinator, ENS Benjamin Nessia, Marine Safety Unit, Toledo, 420 Madison Avenue Suite 700, Toledo, OH 43604; (419) 418-6040, email Benjamin.B.Nessia@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to these rules because doing so would be impracticable. The details of these emergent events were not received in sufficient time for the Coast Guard to solicit public comments before the start of the fireworks and race. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with the race and with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making these rules effective less than 30 days after publication in the Federal Register. Delaying these rules would be impracticable for the the same reasons discussed in the preceding paragraph.

Background and Purpose

On May 27, 2012, the Catawba Island Club Fireworks event will be held on the waters of Lake Erie. The fireworks will be launched from a point located at position 41°34'18.10"N, 082°51'18.70"W (NAD 83). They will be launched approximately between the hours of 9:15 p.m. and 9:45 p.m.

On June 3, 2012, the Racing for Recovery Half & Sprint triathlon will take place on the waters of Lake Erie in the vicinity of Sterling State Park, Monroe, MI. The triathlon will take place from 7 a.m. until 9 a.m.

On June 16, 2012 and again on June 23, 2012, the Put-In-Bay Fireworks event will take place on the waters of Lake Erie. The fireworks will be launched from a point located at position 41°39'19"N, 082°48'57"W (NAD 83). They will be launched approximately between the hours of 9:15 p.m. and 10:30 p.m. on each day.

The Captain of the Port Detroit has determined that these fireworks displays and the triathlon will present hazards to participants and spectators. Such hazards include obstructions to the waterway that may cause marine casualties, vessels colliding with swimmers that may cause death or serious bodily harm, and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Rule

Because of the aforementioned safety concerns, the Captain of the Port Detroit has determined that temporary safety zones are necessary to ensure the safety of spectators and vessels for each of the aforementioned events. The Catawba Island Fireworks Display safety zone will encompass all U.S. navigable waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°34'18.10"N, 082°51'18.70"W (NAD 83). This safety zone will be enforced from 9:15 p.m. until 9:45 p.m. on May 27, 2012.

The Racing for Recovery Half & Sprint safety zone will include all waters of Lake Erie bound by a line beginning onshore at 41°54'14"N; 083°20'01"W to 41°54'13"N; 083°19'48"W to 41°54'50"N; 083°19'39"W to 41°54'51"N; 083°19'52"W (NAD 83), and from thence along the shoreline to the beginning. This safety zone will be enforced from 7 a.m. until 9 a.m. on June 3, 2012.

The Put-In-Bay Fireworks events safety zone will encompass all U.S. navigable waters of Lake Erie within a 66-yard radius of the fireworks launch site located at position 41°39'19"N, 082°48'57"W (NAD 83). This safety zone will be enforced from 9:15 p.m. until 10:30 p.m. on June 16, 2012 and again on June 23, 2012.

Entry into, transiting, or anchoring within the safety zones established by this rule is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed them under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time these zones will be in effect, they will have minimal impact on the economy,

will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue. The safety zones will be enforced for a relatively short amount of time, and vessels may still pass through the zones with permission of the Captain of the Port Detroit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in any portion of the following locations: Lake Erie, Catawba Island, Port Clinton, OH between 9:15 p.m. and 9:45 p.m. on May 27, 2012; Lake Erie, Sterling State Park, Monroe, MI, from 7 a.m. until 9 a.m. on June 3, 2012; Lake Erie, South Bass Island, Put-In-Bay, OH from 9:15

p.m. until 10:30 p.m. on June 16, 2012 and June 23, 2012.

The safety zones created by this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: each safety zone will only be enforced for a relatively short time—approximately thirty minutes to two hours. In the event that these temporary safety zones affect shipping, commercial vessels may request permission from the Captain of the Port, Sector Detroit to transit through the safety zone(s). The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulations are in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the time expected.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman

evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant rule

and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because they are not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) of the Instruction because it involves the establishment of safety zones. An environmental analysis check list and categorical

exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0374 to read as follows:

§ 165.T09-0374 Safety Zones; Catawba Island Club Fireworks, Lake Erie, Catawba Island Club, Port Clinton, OH, Racing For Recovery Half & Sprint, Triathlon, Lake Erie, Sterling State Park, Monroe, MI, Put-In-Bay Fireworks, Lake Erie, Put-In-Bay OH, Put-In-Bay Fireworks, Lake Erie, Put-In-Bay OH.

(a) Catawba Island Club Fireworks. (1) Location. The following area is a temporary safety zone: all U.S. navigable waters of Lake Erie within a 250-yard radius of the fireworks

launch site located at position 41°34'18.10"N, 082°51'18.70"W (NAD 83).

(2) Enforcement period. This safety zone will be enforced between 9:15 p.m. until 9:45 p.m. on May 27, 2012.

(b) Racing for Recovery Half & Sprint Triathlon. (1) Location. The following area is a temporary safety zone: all waters of Lake Erie bound by a line beginning onshore at 41°54'14"N; 083°20'01"W to 41°54'13"N; 083°19'48"W to 41°54'50"N; 083°19'39"W to 41°54'51"N; 083°19'52"W (NAD 83), and from thence along the shoreline to the beginning.

(2) Enforcement period. This safety zone will be enforced between 7 a.m. until 9 a.m. on June 3, 2012.

(c) Put-In-Bay Fireworks. (1) Location. The following area is a temporary safety zone: all U.S. navigable waters of Lake Erie within a 66-yard radius of the fireworks launch site located at position 41°39'19"N, 082°48'57"W (NAD 83).

(2) Enforcement period. This safety zone will be enforced between 9:15 p.m. and 10:30 p.m. on June 16, 2012 and again on June 23, 2012.

(d) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within the safety zones established by this rule is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf.

The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within these safety zones shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

Vessel operators given permission to enter or operate in these safety zones must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: May 17, 2012

J.E. OGDEN

Captain, U.S. Coast Guard

Captain of the Port Detroit

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Date: 06/01/2012]